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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

TOMMY PHILLIPS, individually and) Case No.
 on behalf of all others similarly situated,)

Plaintiff,

vs.

WILBER & ASSOCIATES, P.C.,

Defendant.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
 OF:**

1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227 ET
 SEQ.]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227 ET
 SEQ.]
3. FAIR DEBT COLLECTION
 Fair Debt Collection
 Practices Act, 15 U.S.C. §
 1692, *et seq.*]
4. VIOLATIONS OF THE
 ROSENTHAL FAIR DEBT
 COLLECTION PRACTICES
 ACT [CAL. CIV. CODE
 §1788 ET SEQ.]

DEMAND FOR JURY TRIAL

1
2 Plaintiff TOMMY PHILLIPS (“Plaintiff”), individually and on behalf of all
3 others similarly situated, alleges the following against Defendant WILBER &
4 ASSOCIATES, P.C. upon information and belief based upon personal knowledge:

5 **INTRODUCTION**

6 1. Plaintiff’s Class Action Complaint is brought pursuant to the
7 Telephone Consumer Protection Act, 47 U.S.C. 227 et seq. (“TCPA”).

8 2. Plaintiff, individually, and on behalf of all others similarly situated,
9 brings this Complaint for damages, injunctive relief, and any other available legal
10 or equitable remedies, resulting from the illegal actions of Defendant in
11 negligently, knowingly, and/or willfully contacting Plaintiff no Plaintiff’s cellular
12 telephone, thereby the TCPA, 47 U.S.C. § 227. Plaintiff alleges as follows upon
13 personal knowledge as to himself and his own acts and experiences, and, as to all
14 other matters, upon information and belief, including investigation conducted by
15 his attorneys.

16 3. In addition to Plaintiff’s Class Claims, Plaintiff also brings an action
17 for damages as an individual consumer for Defendant’s violations of the federal
18 Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter
19 “FDCPA”) and the Rosenthal Fair Debt Collection Practices Act, Cal Civ. Code
20 §1788, et seq. (hereinafter “RFDCPA”) which prohibit debt collectors from
21 engaging in abusive, deceptive, and unfair practices.

22 **JURISDICTION AND VENUE**

23 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
24 a resident of California, seeks relief on behalf of a Class, which will result in at
25 least one class member belonging to a different state than that of Defendant, a
26 company with principal place of business and State of Incorporation in Illinois.
27 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
28

1 TCPA, which, when aggregated among a proposed class in the thousands, exceeds
2 the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
3 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
4 (“CAFA”) are present, and this Court has jurisdiction.

5 5. Venue is proper in the United States District Court for the NORTHERN
6 District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)*
7 because Defendant does business within the State of California and Plaintiff resides
8 within this District.

9 **PARTIES**

10 6. Plaintiff, Tommy Phillips (“PLAINTIFF”), is a natural person
11 residing in San Francisco County in the state of California, and is a “consumer” as
12 defined by the FDCPA, 15 U.S.C. §1692a(3), and is a “debtor” as defined by Cal
13 Civ Code §1788.2(h).
14

15 7. At all relevant times herein, DEFENDANT, WILBER &
16 ASSOCIATES, P.C. (“DEFENDANT”), was a company engaged, by use of the
17 mails and telephone, in the business of collecting a debt from PLAINTIFF which
18 qualifies as a “debt,” as defined by 15 U.S.C. §1692a(5). DEFENDANT regularly
19 attempts to collect debts alleged to be due another, and therefore is a “debt
20 collector” as defined by the FDCPA, 15 U.S.C. §1692a(6) and the RFDCPA, Cal
21 Civ Code §1788.2(c).

22 8. Defendants acted through their agents, employees, officers,
23 members, directors, heirs, successors, assigns, principals, trustees, sureties,
24 subrogees, representatives, and insurers.

25 **FACTUAL ALLEGATIONS – TCPA**

26
27 9. Beginning in or around March of 2016, Defendant contacted Plaintiff
28 on his cellular telephone number ending in - 9495, in an effort to collect an alleged

1 debt owed from Plaintiff.

2 10. In its efforts to collect the alleged debt owed from Plaintiff, Defendant
3 used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1)
4 to place its daily calls to Plaintiff seeking to collect an alleged debt owed.

5 11. Defendant’s calls constituted calls that were not for emergency
6 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

7 12. Defendant’s calls were placed to telephone number assigned to a
8 cellular telephone service for which Plaintiff incurs a charge for incoming calls
9 pursuant to 47 U.S.C. § 227(b)(1).

10 13. During all relevant times, Defendant did not possess Plaintiff’s “prior
11 express consent” to receive calls using an automatic telephone dialing system or an
12 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
13 227(b)(1)(A). Furthermore, Plaintiff orally revoked any and all consent to be
14 contacted using an automated telephone dialing system, to the extent any ever
15 existed.
16

17 **FACTUAL ALLEGATIONS – FDCPA**

18 14. In addition to the facts pled above, at various times prior to the
19 filing of the instant complaint, including within one year preceding the filing of
20 this complaint, DEFENDANT contacted PLAINTIFF in an attempt to collect an
21 alleged outstanding debt.

22 15. On or about March of 2016, Plaintiff began receiving numerous
23 calls from Defendant.

24 16. Defendant called Plaintiff multiple times a day, sometimes at least
25 twelve calls a month. On several occasions, Plaintiff told Defendant to stop
26 calling him,

27 17. DEFENDANT’S conduct violated the FDCPA and RFDCPA in
28

multiple ways, including but not limited to:

- a) Causing a telephone to ring repeatedly or continuously to annoy Plaintiff (Cal Civ Code § 1788.11(d));
- b) Communicating, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute an harassment to Plaintiff under the circumstances (Cal Civ Code § 1788.11(e));
- c) Causing Plaintiffs telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff (§ 1692d(5));
- d) Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff (§1692c(a)(1)); and
- e) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff (§ 1692d)).

18. As a result of the above violations of the FDCPA and RFDCPA, Plaintiff suffered and continues to suffer injury to PLAINTIFF’S feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and DEFENDANT is liable to PLAINTIFF for PLAINTIFF’S actual damages, statutory damages, and costs and attorney’s fees.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls

1 within the four years prior to the filing of this Complaint

2 21. Plaintiff represents, and is a member of, The Class, consisting of All
3 persons within the United States who received any collection telephone calls from
4 Defendant to said person's cellular telephone made through the use of any
5 automatic telephone dialing system or an artificial or prerecorded voice and such
6 person had not previously not provided their cellular telephone number to
7 Defendant within the four years prior to the filing of this Complaint.

8 22. Defendant, its employees and agents are excluded from The Class.
9 Plaintiff does not know the number of members in The Class, but believes the Class
10 members number in the thousands, if not more. Thus, this matter should be
11 certified as a Class Action to assist in the expeditious litigation of the matter.

12 23. The Class is so numerous that the individual joinder of all of its
13 members is impractical. While the exact number and identities of The Class
14 members are unknown to Plaintiff at this time and can only be ascertained through
15 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
16 The Class includes thousands of members. Plaintiff alleges that The Class
17 members may be ascertained by the records maintained by Defendant.

18 24. Plaintiff and members of The Class were harmed by the acts of
19 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
20 and Class members via their cellular telephones thereby causing Plaintiff and Class
21 members to incur certain charges or reduced telephone time for which Plaintiff and
22 Class members had previously paid by having to retrieve or administer messages
23 left by Defendant during those illegal calls, and invading the privacy of said
24 Plaintiff and Class members.

25 25. Common questions of fact and law exist as to all members of The
26 Class which predominate over any questions affecting only individual members of
27 The Class. These common legal and factual questions, which do not vary between
28 Class members, and which may be determined without reference to the individual

1 circumstances of any Class members, include, but are not limited to, the following:

- 2 a. Whether, within the four years prior to the filing of this
3 Complaint, Defendant made any collection call (other than a
4 call made for emergency purposes or made with the prior
5 express consent of the called party) to a Class member using
6 any automatic telephone dialing system or any artificial or
7 prerecorded voice to any telephone number assigned to a
8 cellular telephone service;
- 9 b. Whether Plaintiff and the Class members were damages
10 thereby, and the extent of damages for such violation; and
- 11 c. Whether Defendant should be enjoined from engaging in such
12 conduct in the future.

13 26. As a person that received numerous collection calls from Defendant
14 using an automatic telephone dialing system or an artificial or prerecorded voice,
15 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
16 typical of The Class.

17 27. Plaintiff will fairly and adequately protect the interests of the members
18 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
19 class actions.

20 28. A class action is superior to other available methods of fair and
21 efficient adjudication of this controversy, since individual litigation of the claims
22 of all Class members is impracticable. Even if every Class member could afford
23 individual litigation, the court system could not. It would be unduly burdensome
24 to the courts in which individual litigation of numerous issues would proceed.
25 Individualized litigation would also present the potential for varying, inconsistent,
26 or contradictory judgments and would magnify the delay and expense to all parties
27 and to the court system resulting from multiple trials of the same complex factual
28 issues. By contrast, the conduct of this action as a class action presents fewer

1 management difficulties, conserves the resources of the parties and of the court
2 system, and protects the rights of each Class member.

3 29. The prosecution of separate actions by individual Class members
4 would create a risk of adjudications with respect to them that would, as a practical
5 matter, be dispositive of the interests of the other Class members not parties to such
6 adjudications or that would substantially impair or impede the ability of such non-
7 party Class members to protect their interests.

8 30. Defendant has acted or refused to act in respects generally applicable
9 to The Class, thereby making appropriate final and injunctive relief with regard to
10 the members of The Class as a whole.

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227 et seq.**

14 31. Plaintiff repeats and incorporates by reference into this cause of
15 action the allegations set forth above at Paragraphs 1-30.

16 32. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple negligent violations of the TCPA, including but not limited to each
18 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

19 33. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
20 seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
21 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

22 34. Plaintiff and the Class members are also entitled to and seek
23 injunctive relief prohibiting such conduct in the future.

24 **SECOND CAUSE OF ACTION**

25 **Knowing and/or Willful Violations of the Telephone Consumer Protection** 26 **Act**

27 **47 U.S.C. §227 et seq.**

28 35. Plaintiff repeats and incorporates by reference into this cause of

1 action the allegations set forth above at Paragraphs 1-30.

2 36. The foregoing acts and omissions of Defendant constitute numerous
3 and multiple knowing and/or willful violations of the TCPA, including but not
4 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
5 *seq.*

6 37. As a result of Defendant's knowing and/or willful violations of *47*
7 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
8 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
9 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

10 38. Plaintiff and the Class members are also entitled to and seek
11 injunctive relief prohibiting such conduct in the future.

12 **THIRD CAUSE OF ACTION**

13 **Violations of the Federal Fair Debt Collection Practices Act**

14 **15 U.S.C. § 1692 et seq.**

15 39. Plaintiff repeats and reincorporates by reference into this cause of
16 action allegations set forth above at paragraphs 1-30.

17 40. To the extent that Defendant's actions, counted above, violated the
18 RFDCPA, those actions were done knowingly and willfully.

19 **FOURTH CAUSE OF ACTION**

20 **Violations of the Rosenthal Fair Debt Collection Practices Act**

21 **Cal. Civ. Code § 1788 et seq.**

22 41. Plaintiff repeats and reincorporates by reference into this cause of
23 action allegations set forth above at paragraphs 1-30.

24 42. To the extent that Defendant's actions, counted above, violated the
25 RFDCPA, those actions were done knowingly and willfully.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff requests judgment against Defendant for the following:
28

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Violations of the Federal Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

- A. Actual damages;
- B. Statutory damages for willful and negligent violations;
- C. Costs and reasonable attorney's fees,

1 D. For such other and further relief as may be just and proper.

2 **FOURTH CAUSE OF ACTION**

3 **Violations of the Rosenthal Fair Debt Collection Practices Act**

4 **Cal. Civ. Code § 1788 et seq.**

5
6 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
7 Defendant for the following:
8

- 9 A. Actual damages;
10 B. Statutory damages for willful and negligent violations;
11 C. Costs and reasonable attorney's fees,
12 D. For such other and further relief as may be just and proper.

13 **TRIAL BY JURY**

14 Pursuant to the seventh amendment to the Constitution of the United States
15 of America, Plaintiff is entitled to, and demands, a trial by jury.
16

17 Respectfully submitted this 13th day of July, 2016.
18

19 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

20 By: /s/ Todd M. Friedman

21 Todd M. Friedman

22 Law Offices of Todd M. Friedman

23 Attorney for Plaintiff
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